



CDSS

JOHN A. WAGNER  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**

744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



ARNOLD SCHWARZENEGGER  
GOVERNOR

November 25, 2009

ALL-COUNTY LETTER NO. 09-78

TO: ALL COUNTY WELFARE DIRECTORS  
ALL IHSS PROGRAM MANAGERS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: MARK BECKWITH, et al. v. JOHN A. WAGNER, et al., TEMPORARY RESTRAINING ORDER LIMITING IN-HOME SUPPORTIVE SERVICE (IHSS) PROVIDER DISQUALIFYING CRIMES TO THOSE CRIMES LISTED IN WELFARE & INSTITUTIONS CODE § 12305.81

REFERENCE: ACL NO. 09-52, DATED OCTOBER 1, 2009; ACL NO. 09-66, DATED OCTOBER 29, 2009; AND ACLs 09-69 AND 09-70, DATED OCTOBER 31, 2009

This All-County Letter provides information and instruction to counties regarding a temporary restraining order (TRO) issued in the case of Mark Beckwith, et al. v. John A. Wagner, et al., which limits the criminal convictions that would disqualify an individual from becoming an IHSS provider. On November 24, 2009, the Alameda County Superior Court issued a TRO directing the California Department of Social Services (CDSS) to:

- Stop using IHSS provider enrollment forms or other documents requiring individuals to declare that they never have been convicted of a felony crime or serious misdemeanor and/or state that persons convicted of such crimes are not eligible to be IHSS providers; and
- Stop disqualifying or finding individuals ineligible to be IHSS providers on the basis that they have been convicted of a felony or a serious misdemeanor at some point in their life and who are otherwise not disqualified. The court's order does not affect disqualifications of individuals based upon Welfare and Institutions Code (W&IC) Section 12305.81 (persons convicted or incarcerated within the last ten years for child abuse, elder abuse, or fraud).

### IHSS Forms and Documents

Effective immediately, the TRO requires that counties discontinue use of the following documents:

- Provider Enrollment Form SOC 426 (9/09); and
- Frequently Asked Questions (FAQ's) About the IHSS Program Provider Enrollment Form (SOC 426B); and
- Important Information for Prospective Providers About the IHSS Program Provider Enrollment Process (SOC 847).

Until CDSS completes revisions to these forms, counties should use the previous version of the SOC 426 (9/02). CDSS has reposted the previous version of the SOC 426 (9/02) to its Forms and Publications web page at:

[http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_271.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm).

### Criminal Background Checks and Provider Disqualifications

The TRO has not eliminated or stopped the provider fingerprinting and criminal background check requirement. The county and/or Public Authority (PA)/Nonprofit Consortium (NPC) must continue to instruct all current and prospective providers to undergo a fingerprinting and criminal background check and the county/PA must review the Criminal Record Offender Information (CORI) from the California Department of Justice to determine if an individual should be disqualified or found ineligible to be an IHSS provider based upon a conviction or incarceration within the last ten years for the crimes specified in W&I C Section 12305.81. As provided in the TRO, any other felony or serious misdemeanor offense found in the CORI cannot be used by the county/PA/NPC to disqualify a current or prospective provider from providing supportive services in the IHSS program.

### Case Management, Information and Payrolling System (CMIPS)

The ENRL screen in Legacy CMIPS has been changed based on the TRO. The following fields have been modified and/or disabled:

- Termination Reason – reason codes have been updated. Acceptable values are:
  - 01 – SSN Unverified
  - 02 – On Suspended and Ineligible List
  - 03 – Fraud Conviction

- 04 – Child Abuse Conviction
- 05 – Elder/Dependent Adult Conviction
- 08 – Subsequent Arrest Conviction
- 10 – Death (provider's death)

As a result of the TRO, the reason codes 06 /Other Felony Conviction and 07 /Serious Misdemeanor Conviction have been disabled.

Counties are advised that the requirement to complete the 426 Enrollment Form field remains, as the current/prospective provider is still required to complete the provider enrollment form. The provider enrollment form, SOC 426 (9/02) will be used in place of the 9/09 version.

#### Provider Enrollment Requirements

Counties are reminded that in addition to the fingerprinting and criminal background check, all other provider enrollment requirements; provider orientation, submission of a provider enrollment form in person, photocopying of the provider's social security card and photo identification remain in effect and must be completed by providers.

Should you have any questions, please contact the Adult Programs Policy Bureau at (916) 229-4000.

Sincerely,

***Randy Shiroy Signed***  
***Original Document For:***

EVA L. LOPEZ  
Deputy Director  
Adult Programs Division

Attachment



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 THE SOCIAL JUSTICE LAW PROJECT  
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**FILED**  
 ALAMEDA COUNTY

NOV 24 2009

CLERK OF THE SUPERIOR COURT

By Vicki Daybell

Attorneys for Petitioners

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARK BECKWITH, et al.,

Petitioners,

JOHN A WAGNER, Director of California  
 Department of Social Services, et al.,

Respondents

No. RG 09484051

~~CR 09484051~~

ALTERNATIVE WRIT OF MANDATE

On Jan. 29, 2010, at 9AM in Department no. 31 of this Court, located at the  
 United States Post Office Building, 201-13th Street, Oakland, California, respondents John Wagner,  
 Director of the California Department of Social Services, the California Department of Social  
 Services, David Maxwell-Jolly, Director of the California Department of Health Care Services, and  
 the California Department of Health Care Services shall show cause why a writ of mandate should  
 not issue, ordering that (1) respondents may not find persons ineligible for In Home Supportive  
 Services ("IHSS") provider status on the basis that they have ever been convicted of any felony; (2)  
 respondents may not use announcements or enrollment forms for IHSS enrollment indicating that  
 persons convicted of any felony at any time are ineligible for IHSS provider status; and (3)  
 respondents shall notify all persons they or the counties at their direction previously notified that  
 persons convicted of a felony at any time were ineligible for IHSS provider status that such policy  
 is void and that all persons convicted of felony are not ineligible for IHSS provider status.

Petitioners shall and serve all memorandum on or before Friday, November <sup>25</sup>~~18~~, 2009, by fax  
 to 415-703-5480.

Petitioner's Opening Brief shall be filed and served on or before 12/4/09.

Respondents shall file and serve their opposition no later than Dec 18, 2009. Petitioners shall file and serve their reply no later than Jan 11, 2010. All service on opposing counsel may be by FAX.

Until such time as the Court hears and decides the issues presented, respondents and each of them are hereby commanded to:

(1) cease using enrollment forms or other documents indicating that persons convicted of any felony are ineligible for IHSS provider status;

(2) disqualifying or finding ineligible for IHSS provider status persons on the basis they have been convicted of any felony at any time;

IT IS SO ORDERED

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

(1) Cease using enrollment forms or other documents requiring prospective enrollees or applicants to declare that they never have been convicted of a felony crime or serious misdemeanor crime and/or that state that persons convicted of any felony are not eligible to be IHSS providers.

(2) Cease disqualifying, or finding ineligible for IHSS provider status, persons, who are not otherwise disqualified, on the basis that they have been convicted of a felony at some point of their life or have been convicted of a serious misdemeanor crime at some point of their life.

(3) This order does not affect disqualifications based on W&I Code §12305.81.

Nov. 24, 2009

Frank Roesch

-2- Judge of the Superior Court

FRANK ROESCH